

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(March 20, 1997 Session)

FILED

May 21, 1997

Cecil W. Crowson
Appellate Court Clerk

YASUDA FIRE & MARINE)	
INSURANCE COMPANY OF)	
AMERICA,)	DAVIDSON CHANCERY
)	
Plaintiff-Appellant,)	Hon. Irvin H. Kilcrease, Jr.,
)	Chancellor.
v.)	
)	No. 01S01-9609-CH-00187
FRANCINE KUNTZ,)	
)	
Defendant-Appellee.)	

For Appellant:

Mary Sullivan Moore
D. Brett Burrow
Brewer, Krause, Brooks & Mills
Nashville, Tennessee

For Appellee:

Phillip R. Newman
Sarah Hardcastle Hardison
Manier, Herod, Hollabaugh & Smith
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Chief Justice, Supreme Court
John K. Byers, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. This appeal presents us with an issue involving venue in a workers' compensation case. As discussed below, the panel concludes the judgment of the trial court, dismissing the case for improper venue, should be affirmed.

The employer's insurer, Yasuda, commenced this action in Davidson County where, according to the complaint, its principal place of business is located. The employee moved, without supporting affidavits, to dismiss for improper venue. The trial court granted the motion without an evidential hearing.¹

The relevant facts are undisputed. The employee is a resident of Robertson County; the corporate employer has its principal office in Sumner County, where the injury occurred; and the employer's insurer has its principal office in Davidson County.

The trial judge dismissed the complaint for improper venue because, according to the employee's brief, the employee "may not have a different residence than (sic) the employer for the purpose of determining proper venue under the Workers' Compensation Law of Tennessee." Appellate review is de novo upon the record of the trial court. Presley v. Bennett, 860 S.W.2d 857 (Tenn. 1993).

In a significant number of past cases, our Supreme Court held that a workers' compensation action was a transitory one and that venue was to be determined by considering both the provision of the Workers' Compensation Act with respect to venue and the general rules relating to transitory actions. Those cases were overturned by that court's opinion in Five Star Express, Inc. v Davis, 866 S.W.2d 944 (Tenn. 1993), wherein it said in conclusion, "... we now hold that venue in workers' compensation actions is to be determined solely by the workers' compensation venue statute -- section 50-6-225(c)(1) -- and any other authority indicating otherwise is hereby expressly overruled."

The section provides as follows:

(c)(1) The party filing the petition may, at such party's option, instead of filing the same before the county judge or chair, file the same as an original petition in either the circuit, criminal or chancery

¹ The employee has filed a separate action for benefits in Robertson County.

court of the county in which petitioner resides or in which the alleged accident happened, in which event summons shall be issued by the clerk of the court in which the proceeding is instituted, and shall be returned before the court within the time provided for proceedings before a county judge of county chair. (1996 Supp.).

The Workers' Compensation Act expressly requires that it be given "equitable construction." Tenn. Code Ann. section 50-6-116. It is to be interpreted liberally in favor of those entitled to its benefits. Williams v. Preferred Developed Corp., 224 Tenn. 174, 452 S.W.2d 344 (1970). It must be interpreted in a manner designed to protect workers and their families from the economic devastation that can follow on-the-job injuries. Betts v. Tom Wade Gin, 810 S.W.2d 140 (Tenn. 1991).

In Five Star, the "petitioner" was the employer. The present case differs only in that the "petitioner" is not the employer, but its insurer. Yasuda contends that since it is entitled to proceed in its own name, it should be considered the petitioner and allowed to maintain the action in the county where it is principally located.

If we accept that argument, Yasuda could, theoretically, have all workers' compensation claims against it adjudicated in its chosen forum in Davidson County, regardless of where the injured party resides or the injury occurred, even if the employee lives hundreds of miles away or was injured hundreds of miles away. Of course, the employee could assert that Davidson County was an inconvenient venue, but that is not the case here.

The posture of this case forces us to decide whether a workers' compensation insurance carrier can force an injured party to either present his claim in Davidson County or base his objection to such venue on the ground of *forum non conveniens*. Either way involves considerable time and expense and could contribute to economic devastation.

The panel agrees with the trial judge that an insurer may only commence the action in the county in which the employer resides - or, as a corporate resident, has its principal place of business - or where the injury occurred. The employer and its insurance carrier are treated as one for most purposes under the Act, unless otherwise expressly provided for. Tenn. Code Ann. section 50-6-102(a); See also Humphries v. Allstate Insurance Company, 627 S.W.2d 933 (Tenn. 1982). We do not construe section 50-6-225(c)(1) to expressly provide otherwise for the purpose of establishing venue.

The judgment of the trial court is accordingly affirmed. Costs are

taxed to the appellant.

Joe C. Loser, Jr., Judge

CONCUR:

Adolpho A. Birch, Jr., Chief Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

<p>FILED</p> <p>May 21, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

<p><i>YASUDA FIRE & MARINE INSURANCE COMPANY OF AMERICA,</i></p> <p style="text-align: center;"><i>Plaintiff/Appellant</i></p> <p>vs.</p> <p><i>FRANCINE KUNTZ,</i></p> <p style="text-align: center;"><i>Defendant/Appellee</i></p>	<p>} } } } } } } } } } }</p>	<p><i>DAVIDSON CHANCERY</i></p> <p><i>No. 96-1589-I Below</i></p> <p><i>Hon. Irvin H. Kilcrease, Jr.,</i> <i>Chancellor</i></p> <p><i>No. 01S01-9609-CH-00187</i></p> <p><i>AFFIRMED.</i></p>
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JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on May 21, 1997.

PER CURIAM